

Attorney Docket No. 32251-70829
PATENT



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: David C. May Confirmation No. 9351
Serial No.: 09/166,625 Art Unit: 1771
Filed: October 5, 1998 Examiner: Cheryl Ann Juska
For: HIGHLY DRAPABLE PROTECTIVE COVER HAVING ULTRATHIN
NON-WOVEN ABSORBENT LAYER

REPLY BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Below is a reply brief in response to the examiner's answer mailed September 7, 2005.

The examiner's answer at page 16 states "appellant has not properly traversed the examiner's Official Notice" citing MPEP 2144.03 and stating further that such challenge "must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art."

MPEP 2144.03 states, in part,

[i]t is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record, as the principal evidence upon which a rejection is based. Zurko, 258 F.3d at 1385, 59 USPQ2d at 1697 ("[T]he Board cannot simply reach conclusions based on its own understanding or experience-or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings.")

At page 10 of the brief the Official Notice is challenged and it is explained “[t]he above statement of what is ‘well known’ is not in any prior art context so as to provide some insight as to whether there is any motivation to combine the alleged well known information with the prior art of record.” The alleged fact “that it is well known in the art to employ a blend of synthetic thermoplastic fibers and cellulosic fibers to produce a strong nonwoven fabric being bonded by said thermoplastic fibers and to enhance the nonwoven’s ability to bond to other thermoplastic materials” is challenged because 1) such fact must be established by pointing to some concrete evidence, not opinion, and 2) the alleged fact is stated entirely out of context, e.g., it is not clear how such “blend of synthetic thermoplastic fibers and cellulosic fibers to produce a strong nonwoven fabric being bonded by said thermoplastic fibers” would have been used such that it is possible to ascertain motivation to combine with the other prior art of record as suggested in the rejections here on appeal. For at least these reasons, the use of Official Notice as a basis for rejection is improper.

At page 12 of the examiner’s answer it is stated “one skilled in the art would quickly recognize that the thicknesses disclosed by Garland are in error.” This assumption is challenged. There is no prior art basis for this assumption and the lack of prior art on this point is further evidence of unobviousness.

At page 13 of the examiner’s answer it is stated “one skilled in the art would note the error [in Garland] and still be able to produce the invention.” The invention in Garland is defined by the claims which repeatedly assert a film thickness “in the range of 0.0005 to 0.002 mils” (see claims 1, 2, 3, 4, 8, 9, and 10). For at least this reason, this statement in the examiner’s answer is incorrect.

At page 14 of the examiner’s answer it is stated “[b]lends of synthetic and cellulosic fibers are well known in the textile arts.” This assumption is challenged. There is no prior art basis for this assumption and the lack of prior art on this point is further evidence of unobviousness.

Conclusion

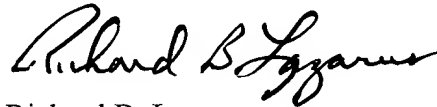
All of the arguments in the final office action and the examiner's answer are overcome by the arguments in appellant's brief or this reply brief. The use of "well known" subject matter without citation of prior art showing such subject matter is further evidence that the rejections are improper.

For the foregoing reasons, the appellant, respectfully, requests that the rejection of claims 1, 3-10 and 12-17 be reversed and the application be allowed.

It is respectfully requested that, if necessary to effect a timely response, this paper be considered as a Petition for an Extension of Time sufficient to effect a timely response and shortages in other fees, be charged, or any overpayment in fees be credited, to the Account of Barnes & Thornburg, Deposit Account No. 10-0435 (32251/70829).

Respectfully submitted,

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